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7  
8 UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 BAY AREA PAINTERS AND TAPERS  
PENSION TRUST FUND, et al.

11 Plaintiffs,

12 v.

13 RHODES PAINTING & DECORATING,  
INC. *aka* RHODES PAINTING, a  
14 California Corporation; and LANETT  
FERGUSON, an Individual,

15 Defendants.

Case No.: C12-6162 MMC

**REQUEST TO CONTINUE CASE  
MANAGEMENT CONFERENCE;  
PLAINTIFFS' CASE MANAGEMENT  
CONFERENCE STATEMENT;  
~~PROPOSED ORDER THEREON~~  
ORDER VACATING CASE MANAGEMENT  
CONFERENCE; SETTING DEADLINE FOR  
PLAINTIFFS TO FILE MOTION FOR  
DEFAULT JUDGMENT**

~~Date: September 13, 2013~~

Time: 10:30 a.m.

Dept.: 7, 19<sup>th</sup> Floor, San Francisco, CA

Judge: The Honorable Maxine M. Chesney

19  
20 Plaintiffs herein respectfully submit their Case Management Statement, requesting that the  
21 Case Management Conference, currently on calendar for September 13, 2013 be continued for 60-  
22 90 days. Good cause exists for the continuance, as follows:

23 1. As the Court's records will reflect, this action was filed on December 5, 2012.  
24 Service on Defendants was effectuated on December 19, 2012, and A Proof of Service of  
25 Summons on was filed with the Court on January 2, 2013 [Dkt. #10]. Defendants failed to plead or  
26 otherwise respond to the lawsuit, and the Clerk entered default as to both Defendants on January  
27 17, 2013 [Dkt. #12].

28 2. As permitted by the Collective Bargaining and Trust Agreements, Plaintiffs

-1-  
**REQUEST TO CONTINUE CASE MANAGEMENT CONFERENCE**

**Case No.: C12-6162 MMC**

1 conducted an audit of Defendants' payroll records for the time period October 1, 2009 through  
2 December 31, 2012. The auditors completed a draft report on or about May 29, 2013, which was  
3 sent to Defendants for review. As Defendants did not contest the audit, the draft report was  
4 considered final, and the audit was billed on June 20, 2013. Defendants' payment was due within  
5 ten days, by June 30, 2013.

6 3. Because Defendants failed to submit payment for the audit, on or about July 3,  
7 2013, Plaintiffs sent a letter to Defendants enclosing a copy of the audit bill, and requesting that  
8 Defendants either submit payment in full or contact Plaintiffs' counsel to arrange a payment  
9 schedule. Having heard nothing from Defendants in response, Plaintiffs' counsel emailed  
10 Defendants on June 9<sup>th</sup> and 11<sup>th</sup> to follow up, advising that a Motion for Default Judgment would  
11 be prepared absent receipt of their response by July 16, 2013.

12 4. Defendants forwarded the July 11, 2013 email to bankruptcy attorneys The Law  
13 Offices of Stan E. Riddle. Nichole Zorrilla of said law office emailed Plaintiffs' counsel advising  
14 that their client, Bennie Rhodes, Jr., filed for Chapter 13 bankruptcy on July 9, 2013, and provided  
15 a copy of the Notice of Bankruptcy Filing. Plaintiffs' counsel requested clarification from Ms.  
16 Zorrilla as to whether the corporation Rhodes Painting & Decorating, Inc. filed for bankruptcy, or  
17 solely Bennie Rhodes, Jr. In response, attorney Vince Wood called Plaintiffs' counsel and advised  
18 that The Law Offices of Stan E. Riddle represent both Bennie Rhodes, Jr. and Lanett Ferguson,  
19 who has power of attorney over Mr. Rhodes, Jr. Mr. Wood further advised that he didn't think a  
20 corporate bankruptcy was appropriate in this case, as the filing fee is substantially higher than that  
21 of an individual bankruptcy, and his client is a small business with a plan to pay its creditors in  
22 full.

23 5. Plaintiffs' counsel analyzed the bankruptcy filings and discovered that "DBA  
24 Rhodes Painting & Decorating, Inc." is included in the Voluntary Petition under other names used  
25 by the Debtor (Bennie Rhodes, Jr.) in the last 8 years, and the amounts due to Plaintiffs for the  
26 audit are included on "Schedule F – Creditors Holding Unsecured Nonpriority Claims".  
27 Nevertheless, it is Plaintiffs' determination that the amounts due from Defendants are not subject  
28 to the bankruptcy matter filed by Bennie Rhodes, Jr., an individual.

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